

**BEFORE THE**  
**GEORGIA PUBLIC SERVICE COMMISSION**

In the Matter of:

BellSouth Telecommunications, Inc.'s	)	
Revisions to its Access Services Tariff	)	Docket No. 15533-U
To Introduce BellSouth SWA Contracts	)	

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES,  
L.L.C.'s APPLICATION FOR LEAVE TO INTERVENE AND  
NOTICE OF OPPOSITION**

AT&T Communications of the Southern States, L.L.C., ("AT&T"), pursuant to O.C.G.A. §§46-2-59 and 50-13-14 and Section 515-2-1-.06 of the rules of the Georgia Public Service Commission ("Commission"), hereby files its Application for leave to intervene in the above-styled matter and Notice of Opposition to the tariff revisions filed in the above-referenced docket. AT&T further moves that the Commission, in accordance with its authority pursuant to O.C.G.A. §46-5-168(b)(7), suspend the July 5, 2002 effective date of BellSouth Telecommunications, Inc. ("BellSouth") tariff filing in this Docket in order for this Commission, AT&T and any other parties to have the opportunity to further investigate and consider the impact of the proposed tariff. In support of this application, AT&T respectfully shows as follows:

1.

On June 6, 2002, BellSouth submitted to the Commission the above-referenced tariff revisions, which were assigned Docket No. 15533-U. The proposed tariff revisions list an effective date of July 5, 2002. AT&T understands these proposed tariff

provisions provide for the reduction of switched access (SWA) charges based upon volume discount percentages applied to annual local switching minutes of use (MOU).

2.

The tariff revisions, which are ambiguous, indicate that in order to receive the discounts, a customer has to be "similarly situated" to another customer to subscribe to the tariff. However, the tariff does not indicate to whom the customer must be "similarly situated."

3.

Based upon the provisions of the tariff, it appears that BellSouth Long Distance may be the only "customer" that would benefit from the tariff. In order to obtain the volume discounts, a customer must have sustained growth in local switching MOU's during the term of the contract. (Tariff, E.26.1.5). An interexchange carrier (IXC) that has an improvement over its historical trend of switching MOU, yet fails to exceed the minimum qualifying MOU, would not receive the discount. That is because the tariff only recognizes percentage growth, not actual growth, to determine the applicable discount.

4.

Based upon the foregoing, the revised tariff is anticompetitive pursuant to O.C.G.A. §46-5-169(3), (4), and (6) because it can allow one or more IXCs an advantage in obtaining favorable switched access rates compared to other IXCs without a reasonable justification for such preference. In addition, the revised tariff could provide a preference to an affiliated company of BellSouth Telecommunications, Inc. – BellSouth Long Distance – as well as result in price discrimination in favor of one IXC over another IXC.

5.

AT&T provides local and interexchange telecommunication services within the State of Georgia pursuant to Certificates of Public Convenience and Necessity issued by the Georgia Public Service Commission.

6.

The BellSouth tariff filing in question may have a direct and material effect upon the legal rights, duties, privileges, immunities or other legal interests of AT&T. AT&T has a substantial and special interest in a Commission determination with respect to the issues raised herein that are not otherwise adequately represented.

7.

AT&T's rights and interests cannot be adequately represented by any other party in this docket, and its participation in this docket will not unduly delay any proceedings that may be initiated.

8.

AT&T respectfully requests that it be granted leave to intervene and participate fully as a party in this proceeding, including the right to present testimony and exhibits, cross-examine witnesses, present arguments and file briefs.

9.

AT&T requests that the following person be included on the service list in this docket and that all communications regarding this docket be directed to:

Suzanne W. Ockleberry, Esq.  
AT&T  
1200 Peachtree Street, Room 8077  
Atlanta, Georgia 30309  
(404) 810-7175

WHEREFORE, AT&T respectfully requests that the Commission enter an Order allowing AT&T to become a full party of record in this docket and suspending the July 5, 2002 effective date of BellSouth's tariff filing in this Docket in order for this Commission, AT&T and any other parties to have the opportunity to further investigate and consider the impact of the proposed tariff.

Respectfully submitted,

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Suzanne W. Ockleberry  
AT&T Communications of the  
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(404) 810-7175

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of AT&T Communications )  
of the Southern States, LLC for suspension )  
and cancellation of Switched Access )  
Contract Tariff No. FL2002-02 filed by )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

Docket No. :  
Filed: July 16, 2002

**PETITION OF AT&T COMMUNICATIONS  
OF THE SOUTHERN STATES, LLC  
REQUESTING SUSPENSION OF AND CANCELLATION  
OF SWITCHED ACCESS CONTRACT TARIFF NO. FL2002-02  
FILED BY BELL SOUTH TELECOMMUNICATIONS INC.**

COMES NOW, AT&T Communications of the Southern States, LLC (AT&T), and hereby files this Petition requesting the suspension and cancellation of BellSouth Telecommunications, Inc.'s (BellSouth's) Switched Access Contract Tariff No. FL2002-01 by the Florida Public Service Commission for violations of the Telecommunications Act of 1996, rules of the Federal Communications Commission (FCC) and Chapter 364, Florida Statutes. In support of this petition AT&T states:

1. The name and address of the Petitioner is:

AT&T Communications of the Southern States, LLC  
1200 Peachtree Street  
Suite 8100  
Atlanta, Georgia 30309

2. All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of Petitioners:

Tracy Hatch, Esq.  
Floyd R. Self, Esq.  
Messer, Caparello and Self, P.A.  
P. O. Box 1876  
Tallahassee, FL 32302

(850) 222-0720

Virginia Tate, Esq.  
AT&T Communications of the Southern States, LLC  
Suite 8100  
1200 Peachtree Street, N.E.  
Atlanta, GA 30309

3. This petition is filed pursuant to Chapters 120 and 364, Florida Statutes, the Telecommunications Act of 1996, and Rule 28-106.201, Florida Administrative Code.

4. Petitioner is certificated by the Florida Public Service Commission in Florida as an Interexchange Carrier (IXC) and an Alternative Local Exchange Telecommunications Company (ALEC).

5. Currently, BellSouth's Intrastate Access Services Tariff is the only tariff available to IXCs under which they may purchase "switched access services" from BellSouth. "Switched access charges" are the charges paid by IXCs to compensate BellSouth for originating and terminating long distance calls.<sup>1</sup> Such charges constitute a significant proportion of the total cost of a long distance call and, therefore, have a significant influence on long distance rates.

6. On June 3, 2002, BellSouth filed revisions to its Florida Access Services Tariff to add Section E26, Switched Access Contract Tariff No. FL2002-01 ("Revised Tariff"). The Revised Tariff carries an effective date of June 17, 2002. A copy of the Revised Tariff is attached hereto as Exhibit 1.

7. The Revised Tariff seeks to fundamentally change the switched access landscape in Florida, conveniently at a time when BellSouth soon hopes to enter the interLATA long distance

market in Florida through its affiliate BellSouth Long Distance, Inc. (BSLD).

8. Until the filing of this Revised Tariff, BellSouth has always charged all long distance carriers the same access charges. Now, BellSouth has proposed -- for the first time -- to charge some long distance carriers more than others for originating and terminating calls. Specifically, the Revised Tariff will allow BellSouth to enter into a special contract with an as yet unnamed long distance carrier with whom BellSouth has apparently been in negotiations. Under that contract, BellSouth will reduce access rates for that unnamed carrier by up to 35% while, at the same time, continuing to charge the regular tariffed rates to all other long distance carriers, including those which have the same amount of usage as the unnamed contract carrier.

9. This is the first time BellSouth has offered a customer specific contract service arrangements for switched access services. BellSouth's Revised Tariff is discriminatory on its face. It applies, for example, to a long distance carrier which has, during the first year of the contract, total minutes of not less than "1,054,830,619" and not more than "1,371,279,805" minutes.<sup>2</sup> For reasons not explained, the discounts "are not applicable to any usage levels outside" of that very narrow range. See Section E26.1.5 of the Revised Tariff. Furthermore, the contract is written so that the discounts apply only if the carrier's minutes of use are steadily increasing. A carrier which has the same total number of minutes as the "contract" carrier but does not have annual growth could not

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1 When a customer dials a long distance call, the customer's local telephone company first delivers the call to the customer's long distance carrier. The long distance carrier pays "originating" access charges to the local carrier for delivering the call. Similarly, at the other end of the call, the long distance carrier pays "terminating" access charges to compensate the receiving party's local carrier for delivering the call to its final destination.

2 The specificity of these numbers clearly indicates that the tariff is designed for one, particular long distance carrier and is not intended for use by other carriers.

take advantage of these discounts. *Id.*<sup>3</sup> Florida law does not allow for the type of special contract BellSouth has proposed in the Revised Tariff.

10. In particular, the discounts are designed to provide reduced access charges for specified levels of growth in switched access usage. This is a *growth* tariff which provides:

- a. To qualify for discounts, the IXC in Year 1 must exceed the minimum usage specified; in Year 2, it must exceed 102% of the minimum usage; and by Year 4, it must exceed 110% of the minimum usage.
- b. BellSouth applies a discount to the revenue associated with minutes that exceed the minimum usage (*i.e.*, growth or incremental volumes up to 30% of the minimum usage) during the relevant year.

11. Because the Revised Tariff provides discounts based only on "positive incremental" or growth of local switching minutes of use (MOU's), the Revised Tariff only benefits those IXC's, like BSLD, that will experience a growth in MOU volumes. An IXC, like AT&T, whose intrastate volume historically has been declining is discriminated against by the methodology of the Revised Tariff. Under this growth tariff, IXCs with *identical* traffic volumes will be paying disparate per-minute rates for switched access because the IXC with increasing switched access MOU volumes will be able to take advantage of the growth discount plan whereas customers in a "no growth" or "declining trend" mode cannot obtain the discount. Consequently, the effective per-minute switched access rate for customers with growth will be lower than the rate for customers with the same amount of traffic that do not exhibit growth.

12. BellSouth's discount growth rate in the Revised Tariff is blatantly anticompetitive and unreasonably discriminatory in its design and in its ultimate effect in violation of Sections

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<sup>3</sup> In other words, the proposed tariff is not a "volume discount," as it is described in BellSouth's "Executive Summary," but a "growth" discount. Such growth discounts have been explicitly rejected by the FCC. *LEC Pricing Flexibility Order* (FCC 99-206, 14 FCC Rcd 14,221, ¶¶ 134-135 (1999)).



364.051(5), 364.08, 364.09, 364.10 and 364.3381, Florida Statutes, as well as Section 251(g) of the Telecommunications Act of 1996

13. With the prospect of this level of growth for BellSouth's long distance service, the effect and the timing of BellSouth's Revised Tariff is more than simply coincidental with its efforts to enter the full long distance market place. The only carrier that appears remotely likely to have sufficient initial switched access minutes-of-use (MOU) volumes to benefit from the tariff and that has the prospect of sufficient growth in MOUs to benefit is BellSouth. Not only will BellSouth take a substantial market share from the IXC's upon clearing the 271 bar, it will give itself a discount on its switched access charges in the process. Nothing could be more anticompetitive and discriminatory against the other IXC's and ALEC's that compete in the long distance market.

14. BellSouth has filed its Switched Access Contract Tariff in other states in its serving area. In Georgia, AT&T filed an intervention and explained the anticompetitive nature of the Tariff. Subsequently, on July 8, 2002, BellSouth filed a letter requesting that the Georgia Public Service Commission delay the effective date of the tariff due to questions raised by Commission staff. In North Carolina, the Utilities Commission issued an Order on June 25, 2002 suspending the tariff and requested that the parties negotiate to resolve the matter.

15. Petitioner anticipates that disputed issues of material fact will include, but not be limited to, BellSouth's disagreement with some or all of Petitioners' contentions set forth in this Petition.

16. Pursuant to Chapters 120 and 364, Florida Statutes, and applicable Commission rules and orders, the Commission should immediately suspend BellSouth's Switched Access Contract Tariff No. FL2002-01, schedule a formal administrative hearing to consider and resolve disputed

issues of fact and law concerning the effects and impacts of the Revised Tariff, and enter a final order denying and canceling the Revised Tariff.

WHEREFORE, Petitioner respectfully requests that the Commission:

- A. Suspend the effectiveness of BellSouth's Switched Access Contract Tariff No. FL2002-01;
- B. Schedule and conduct a formal administrative hearing to address disputed issues of fact and law regarding the Revised Tariff pursuant to Sections 120.569 and 120.57(1), Florida Statutes;
- C. Enter a final order denying and canceling the Revised Tariff; and
- D. Grant such further relief as the Commission deems just and proper.

Respectfully submitted this 16<sup>th</sup> day of July, 2002.

Respectfully submitted,

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